

1 So --

2 JUDGE SIPPEL: Is this the unjust enrichment
3 argument basically?

4 MS. KIDDOO: I think that's -- I think that's what
5 he was getting at although he did not use those words this
6 morning.

7 JUDGE SIPPEL: I've seen this in his brief. Is
8 that it, Mr. Beckner, that --

9 MR. BECKNER: I'm not -- I'm not today trying to
10 argue unjust enrichment or any of these things. I'm just
11 describing what I believed happened and what I believe the
12 purpose was of what happened. And I don't want to take up
13 Ms. Kiddoo's time, but the short answer is if Liberty is
14 providing programming or RCN is providing programming in a
15 particular building by means of a microwave and it's found
16 to be disqualified from holding the license for that
17 microwave, then it can't provide the programming to the
18 people in the building because there's no way to get it
19 there and that includes any other buildings that might be
20 linked by -- by cable.

21 JUDGE SIPPEL: Well, I don't want to get too far
22 afield but --

23 MS. KIDDOO: Well, perhaps what Mr. Beckner said
24 this morning was that somehow Bartholdi was attempting by
25 this transaction to insulate valuable pieces of its business

1 from any adverse consequences from this FCC proceeding. My
2 point is that I'm not sure that they have insulated anything
3 for precisely the reasons that Mr. Beckner just stated.

4 JUDGE SIPPEL: All right. Okay. I'm going to
5 leave it there. I want to get on to some things. And I
6 don't mean to say that that's not important. But I want to
7 get -- be sure that I have some questions answered. Now,
8 did you want -- is there anything more that you wanted to
9 say on this then, Ms. Kiddoo? Are you finished with your
10 opener?

11 MS. KIDDOO: Yes, sir.

12 JUDGE SIPPEL: Okay. All right. Let me -- let me
13 start in by being sure that -- now, I understand -- I'm
14 going to just say preliminarily from what I understand and
15 from what everything that has been shown to me indicates,
16 this -- the company is now -- Liberty Cable Company is now
17 doing business as Bartholdi Cable Company. Now, and there's
18 been -- the Commission was informed by the appropriate
19 correspondence back in -- I believe it was back in January
20 or February of this year that there was going to be the name
21 change. We don't have to get -- I'm sorry, it was in March.

22 Now, Mr. Milstein -- the three Mr. Milsteins own
23 100 percent of Bartholdi, is that correct?

24 ALL: Yes, Your Honor. That's correct. That's
25 right.

1 JUDGE SIPPEL: And the reason that the name was
2 changed to Bartholdi was because one of the assets that
3 Freedom purchased was the name, Liberty Cable?

4 ALL: Yes. That's correct, Your Honor.

5 JUDGE SIPPEL: All right. Now, so there's no --
6 there's no hidden group called the Bartholdis or anything
7 that's involved in this at all?

8 MR. SPITZER: Mr. Bartholdi, Your Honor, I think -
9 - I did not come up with the name -- designed the Statute of
10 Liberty. I think that was the genesis of the name.

11 JUDGE SIPPEL: Okay. That's --

12 MR. SPITZER: There are no Bartholdis that I'm
13 aware of.

14 JUDGE SIPPEL: I'm just trying to -- I'm just
15 trying to clear -- I'm just trying to get everything clear
16 in my own mind. I'm not trying to look for another issue.
17 I know that I found this --

18 MR. PETTIT: I think that the Bartholdis are in
19 control of Time Warner.

20 JUDGE SIPPEL: Well, I found that Mr. -- the Benz
21 of the Mercedes Benz group had married a woman from
22 Barcelona whose name was Mercedes and that's why we have
23 Mercedes. Who knows. Okay. Now, then there was this
24 meeting with the Bureau on the January 25th at which I take
25 it the purpose of the meeting was to kind of scope this out

1 and get a feel from the Bureau as to whether or not they
2 would have any problem with it. Is that essentially it?

3 MR. PETTIT: Well, I think there were two purposes
4 to the meeting. One was that, Your Honor, which as the
5 Bureau knows, there are a lot of meetings in the Wireless
6 Bureau much to the Wireless Bureau's regret I think a lot of
7 the time. But there is sort of a scoping out, belt and
8 suspenders approach to sort of checking out transactions.
9 So that was clearly one of the objects of the meeting.

10 The other was to confirm our reading of Part 94 of
11 the rules that a private carrier system would still be
12 allowed under the rules. And, you know, again, that was our
13 reading. I take it it's the Bureau's reading, as well. And
14 that was a second purpose of the meeting.

15 JUDGE SIPPEL: Well, what is that? 94.17 is the
16 private carrier? I mean, couldn't that be done with a phone
17 call or -- I mean, what's the meeting? And the meeting is
18 with the Bureau and the Bureau doesn't really know who
19 they're meeting with. That's how it's come across to me.
20 They knew that they were meeting with Liberty's counsel, but
21 they didn't know who the other -- that somebody else was
22 there, but they didn't know who they were meeting with.

23 MS. KIDDOO: Your Honor, one of the things that I
24 could add to Mr. Pettit's two reasons for the meeting is a
25 third reason. This is when Freedom purchased the asset --

1 was negotiating to purchase the assets of Bartholdi which at
2 that time was called Liberty. It was aware of this
3 proceeding and was aware that there had been questions
4 raised in petitions and that the Bureau was seriously
5 investigating those issues.

6 It was therefore, I think when we reviewed the
7 transaction and satisfied ourselves that it was consistent
8 with the FCC's rules and that, in fact, no approvals were
9 needed in order to transfer the assets that were being
10 transferred. It was our view that because we had the
11 question that we wanted -- we had never ourselves been
12 familiar with which is the transfer -- the change in the
13 category of services being provided by Bartholdi which was,
14 you know, a full service programming and microwave
15 combination to a private carrier type of service -- that
16 that was sufficiently different that we felt that it was
17 important with talking to the Bureau about any of the issues
18 that were being investigated with respect to prior licensing
19 issues, to run that structure of the transaction by the
20 Bureau to make sure that they were comfortable with the
21 structure of the deal.

22 Now, it was before we had entered into an asset
23 purchase agreement because we felt that we needed to make
24 ourselves comfortable that there were no issues we didn't
25 understand here with this structure. And we satisfied

1 ourselves with that and the asset purchase agreement was
2 entered into a couple of weeks later.

3 But the very fact that this investigation of the
4 Bartholdi licensing was going on was one of the reasons why
5 we felt it was important to meet with the Bureau and just
6 make sure that the structure was something that didn't cause
7 any unknown issues as it relates to their investigation of
8 other Bartholdi licensing questions.

9 JUDGE SIPPEL: Well, how long was this being --
10 this asset purchase concept or the -- how long was that --
11 if I can call it the deal, how long was that deal being
12 discussed between Liberty and Freedom?

13 MS. KIDDOO: In a deal of this magnitude, it takes
14 some time. I -- it was certainly in the last month or two
15 of 1995 that to my knowledge the negotiations started. So
16 it went on for --

17 JUDGE SIPPEL: So it was late '95?

18 MS. KIDDOO: Late '95.

19 MR. PETTIT: Mr. Price in his affidavit does
20 reflect the negotiation, the transaction took some weeks
21 before execution of the agreement on February 20th.

22 JUDGE SIPPEL: Well, some weeks, that's not a long
23 time. I mean, you're talking about general assets for 45
24 million dollars.

25 MR. SPITZER: This was a negotiation that began in

1 late '95 and continued with increasing intensity through the
2 end of February and then into early March.

3 MS. KIDDOO: There were a lot of discussions, Your
4 Honor, prior even to the first word being written on paper.
5 And that's --

6 JUDGE SIPPEL: That's what I'm trying to find out,
7 you know, what -- you know, this goes -- but it was sometime
8 around the end of '95 that people actually started talking
9 in serious terms about this.

10 MR. SPITZER: Can I add -- I don't know if this is
11 the fourth reason or if this is already subsumed in some way
12 beneath the reasons that Bob and Jean have alluded to.
13 There was also a concern given the regulatory uncertainty
14 surrounding what was then called Liberty, that Liberty never
15 be accused of consummating a transaction such as this behind
16 the back of the Commission.

17 This was front and center in our minds, that we
18 didn't want anybody ever to say you didn't reveal this to
19 the Commission which unfortunately was ultimately what was
20 said anyway. But it was very critical to us that we be
21 forthright with the Commission in saying here is a
22 transaction that's being considered and here are the
23 parameters of this transaction.

24 JUDGE SIPPEL: Okay. So you were -- so Liberty --

25 MR. SPITZER: And there was as obligation to do

1 so.

2 JUDGE SIPPEL: Liberty in a sense then was under
3 gun. They knew that the Commission was focused. I mean,
4 they were having these problems with New York and they
5 knew --

6 MR. SPITZER: They were in the guillotine, Your
7 Honor, with the blade coming down.

8 JUDGE SIPPEL: All right. So they knew this
9 though in late '95 when these discussions first started to
10 kick in. So I take it that Freedom was told this, too.

11 MR. SPITZER: That's what Swidler and Berline
12 issued the earlier -- at the aspects of this.

13 JUDGE SIPPEL: So when you -- now, so then when
14 you went to the meeting in January, was the Commission staff
15 told this, I mean, of your frame of mind at that time and
16 you told them up front? You said look, we want to talk to
17 you about a deal that we're thinking about putting together
18 but we've get some very -- we want to be sure that you're
19 aware of this up front because we know that we're under
20 the -- we're being under the scope here in addition to the
21 fact that we want to get your reaction to the deal.

22 MS. KIDDOO: That was specifically raised, yes,
23 sir.

24 JUDGE SIPPEL: Okay. Now, Mr. -- I don't want
25 to -- you know, this is not a testimonial session, but this

1 is an explanation that I'm getting from Liberty/Freedom, and
2 the representations and the correspondence between the
3 Bureau and Mr. Pettit's office and representations in the
4 pleadings seem to indicate that there was a different
5 reaction to what happened or a different understanding as to
6 what was going on at the meeting.

7 MS. KIDDOO: Your Honor, I just want to make it
8 clear though that while I say that it was specifically
9 raised that we were concerned about what was going on with
10 Liberty, I wanted to specifically mention that it was
11 Liberty that was the seller here. I did not disclose the
12 name of RCN or Freedom because at that time, the agreement
13 had not been struck and it might never have been struck
14 depending upon in part the outcome of that meeting. So that
15 was not disclosed.

16 JUDGE SIPPEL: Okay. Well, they had somebody at
17 the meeting that was representing them?

18 MS. KIDDOO: Myself and a colleague of mine, yes.

19 MR. WEBBER: I'd also like to just point out one
20 thing quickly and then you're free to question Mr.
21 Davenport, of course. But the Bureau is taking the stance
22 of what occurred in this January 25 meeting is really not
23 relevant to the issues of whether this issue should be added
24 or not. I mean, we're really focusing on the real thrust or
25 the real important fact of whether this should be this

1 added, is whether or not control has remained with Liberty.
2 And obviously, prior -- and we're talking actual control.
3 And obviously, prior to Liberty even selling their assets,
4 they would have had control at that point.

5 They could not have discussed what would have
6 occurred or what actually is occurring after this
7 contemplated transaction. And so there's no way that could
8 have been discussed in January, what would have actually
9 happened, because nothing had -- it hadn't happened yet.
10 And I guess with that caveat, if you think, you know, you
11 need to go into the January meeting more, Mr. Davenport
12 certainly is here to answer those questions.

13 JUDGE SIPPEL: Well, I'm just -- I really just am
14 trying to get the gist. Everything you say -- I accept
15 everything you say with the exception that the
16 representations in the pleadings are to the effect from the
17 Liberty side that, you know, we told the Bureau everything
18 that we wanted to do and we walked away with the impression
19 that there was no problem. And I'm asking Mr. Davenport, is
20 that the impression that you gave them, that there was -- I
21 mean, that you were in effect writing it off and saying
22 well, no, you don't see any problem with that.

23 MR. DAVENPORT: Well, let me put the meeting into
24 context if I might. First off, the Bureau of the FCC had
25 just returned recently from the federal furloughs. And

1 everyone had quite a bit of backlog work. Also at that
2 time, Time Warner and Paragon had filed petitions to deny
3 against Liberty. I was, therefore, asked to attend this
4 meeting to make certain that Liberty nor the undisclosed
5 white knight got into any areas which might constitute an ex
6 parte contact. So that's the context in which I was viewing
7 the meeting, making certain that nothing was said which
8 might constitute an ex parte contact.

9 Keep in mind, Time Warner had already filed two --
10 I think it was two allegations saying that Liberty had made
11 ex parte contacts with the Bureau. So I guess I was there
12 for an enforcement -- a police purpose, if you will, to make
13 certain that there were no inadvertent ex parte contacts. I
14 think the sole area where there may be some disagreement
15 concerns the transmission agreement.

16 Liberty and the white knight made it very, very
17 clear that they were going to proceed under Part 94.17, and
18 that in their view, there was no need for regulatory
19 approval on the part of the Commission, but that they would
20 file the transmission agreement with our Gettysburg office.

21 JUDGE SIPPEL: The transmission -- the service
22 agreement --

23 MR. DAVENPORT: The transmission service
24 agreement, yes. Beyond that, I don't know that there's any
25 area of disagreement as to what occurred at the meeting.

1 And again, I want to emphasize that I was but one person who
2 attended that meeting on the part of the Bureau. And the
3 context in which I was attending and listening was to make
4 certain that there were no ex parte contexts concerning the
5 petitions to deny.

6 JUDGE SIPPEL: Okay. Okay. Now, of course, this
7 disclosure, it does have some bearing, too, in terms of
8 the -- this 1.65 issue. I mean, one of the big complaints
9 certainly that struck me was the fact that they had gone
10 forward with this while this proceeding was going on, and
11 then all of a sudden, bang, we learn of it through 10-Ks
12 coming up and, you know, being found at the SEC and this
13 type of thing. Apparently, there was -- well, we're hearing
14 it here today. So I think this does have some relevance in
15 terms of what we're -- what the ultimate issue is going to
16 coming out on these motions.

17 Is there anything else that you wanted to
18 characterize with respect to that meeting then, Mr. Pettit?

19 MR. PETTIT: No. You know, we went in with
20 specific objectives in mind and thought that they were
21 accomplished as I would say is sort of par for the course
22 for a meeting of that kind. I'm sure we all had different
23 recollections as would be normal of exactly what was said.
24 On the filing in Gettysburg, for example, what I took away
25 from the meeting was we would look at the rules and if -- we

1 would file it where it was required to be filed. I do
2 remember someone raising whether we needed to file in
3 Gettysburg. As it turns out, that's not the case.

4 But that is how I would remember the meeting. And
5 as Mr. Webber has said, I would say that it is of marginal
6 relevance to the question of a transfer. The meetings
7 happen all the time. I don't think any licensee, you know,
8 relies entirely on what is said in the course of a meeting,
9 particularly when, as the Bureau says, there wasn't even an
10 agreement at the time. There was no definitive agreement.
11 The documents in that regard speak, you know, by themselves.

12 JUDGE SIPPEL: Okay.

13 MR. KIRKLAND: Your Honor, with all due
14 trepidation in light of my role here as essentially the
15 fourth wheel, I've just heard counsel say that they thought
16 it was very important to address with the Bureau how this
17 agreement dovetailed with this proceeding. And I'm having
18 great difficulty understanding why in light of that felt
19 necessity they didn't also feel the necessity to report the
20 consummation of the transaction or the details of the
21 transaction on the record in this proceeding.

22 JUDGE SIPPEL: Well, I don't need to get into
23 that. I mean, I've got the pleadings. I know what the
24 position that -- that Liberty has taken with respect to
25 that. It -- I don't feel -- I don't feel -- I mean, I don't

1 feel good about it at all, not disclosing something like
2 this in the middle of a proceeding when proceeding is going
3 on. But you know, the views have been expressed in the
4 pleadings and there's no sense in my trying to put somebody
5 on the spot with anything. What's been done has been done.
6 Mr. Beckner?

7 MR. BECKNER: Your Honor, I really don't want to
8 get involved at this time at least in cross examining by
9 anybody. I just want to direct your attention to page 3 of
10 the Wireless Bureau's paper filed on May 14, paragraph
11 number 4 which says, "At no time during the discussing
12 between the staff and Liberty and counsel for the unnamed
13 source did the Bureau ever voice an opinion as to whether
14 any contemplated transactions could take place without prior
15 Commission approval or notification. To the contrary, the
16 nature and level of the discussion was such that there was
17 no information specific enough for the Bureau" -- I'm sorry,
18 "for which the Bureau to consider let alone acquiesce in or
19 approve."

20 That sounds to me somewhat different than what
21 we're hearing now. I mean, I'm not going to repeat our
22 position that's in the papers about this whole issue of the
23 meeting. But I'm not sure that -- that there isn't in fact
24 a material disagreement between the Bureau and Liberty about
25 what was said at the meeting or on this particular issue,

1 because what the Bureau is saying, at least in this paper as
2 I read it, is that the Bureau never said well, that's okay.

3 JUDGE SIPPEL: Well, let's hear. Go ahead.

4 MR. WEBBER: Your Honor, that is correct and I
5 don't think our position has changed today at all. I -- our
6 discussion about the meeting today has never gone to the
7 level where we told Liberty or this unnamed party that they
8 had a stamp of approval. And we still maintain that such
9 was never given to them. They were never given a blessing
10 mainly because the details of their description were kept
11 cryptic enough, or at least unspecific enough that we
12 weren't able to get to the point to say you have our
13 blessing, go to it.

14 MR. PETTIT: Your Honor, I think the level of
15 detail, in fact, explains that. If I may get back to your
16 concern about the nondisclosure of this arrangement about
17 which I assume you bring up the 1.65 question. That
18 requires disclosure of information in the course of a
19 proceeding such as this which is of decisional significance
20 is the phrase that's used in the -- in the rule. It is our
21 position that there is nothing about the question of whether
22 Liberty owns or does not own a programming service which is
23 of decisional significance to any of the issues which have
24 been designated in this hearing. It simply is irrelevant to
25 the issues.

1 JUDGE SIPPEL: Well, I -- you know, I hear your
2 argument and I've read your argument. I'm not going to let
3 that -- I don't want to let that question control what's
4 going on here today or let it control what we do with these
5 issues. The main focus has got to be on this control
6 question. But I'm certainly not going to buy -- to lead you
7 with a false impression that I don't think that this
8 information was not significant enough to report to the
9 Commission. That's one of the reasons why I'm spending all
10 this time wanting to know how much was told to them back in
11 January.

12 Even though it was an informal 1.65 filing, at
13 least there was some information that was given to the
14 Commission about this. But I'm not suggesting either that
15 that satisfies 1.65. You know, I was very surprised when
16 this issue was raised. If all this had gone on since the
17 first of this year and that the person or the attorney
18 didn't know about. But well, I don't want to get into that
19 because it's -- we're going to run out of time and people
20 are going to have to leave and I'm not going to be finished.

21 How much does Freedom owe under the asset
22 agreement at this time? I mean how much is due, how much is
23 under the purchase agreement?

24 MS. KIDDOO: I think it's 15 million dollars.

25 JUDGE SIPPEL: Fifteen million dollars? Okay.

1 And the structure of the agreement seems to open the door,
2 and I know this has been raised I think by Mr. Beckner --
3 seems to open the door for Freedom to acquire -- eventually
4 to acquire control over the whole operation. I mean,
5 they'll end up with all the facilities at some point. It
6 doesn't say that's going to happen, but it certainly is
7 structured in such a way to allow that to happen without any
8 difficulty.

9 MR. PETTIT: I'd have to say that is one
10 possibility, Your Honor. It's also a possibility as you
11 know from the agreement that Freedom will build a wireless,
12 with the Commission's approval of course, system and that
13 that sort of transfer would now take place.

14 JUDGE SIPPEL: Right. I understand. All of this
15 is said in conjunction -- I mean, there's all kinds of
16 language in that agreement that this is going to be done in
17 accordance with Commission practice, policy.

18 MR. PETTIT: We might add, Your Honor, at that
19 juncture, of course, Bartholdi will continue to have those
20 licenses. What will be done with them, in fact, I don't
21 know. They seem like they'd have to be used for video.

22 JUDGE SIPPEL: There wouldn't be an effort to
23 transfer them?

24 MR. PETTIT: There may be an effort to transfer
25 them. They may be turned in to the Commission and that's a

1 possibility, too, or they may be operated in some other
2 manner assuming there would be -- or Bartholdi holds them.

3 JUDGE SIPPEL: How old are the Milsteins?

4 MR. BECKNER: Mid-forties, Your Honor.

5 JUDGE SIPPEL: Now, what about the contracts in
6 progress with the subscribers? I take it all of those are
7 now the assets of Freedom?

8 MS. KIDDOO: That's correct, Your Honor. And
9 there are some transition months that were entered prior to
10 March 6th.

11 JUDGE SIPPEL: Do the subscribers have to agree to
12 that? I mean, do they -- they don't -- they just are told -
13 - do they get a little card or something that says that now
14 you're going to be sending your bills to and your things to
15 Freedom?

16 MR. SPITZER: Your Honor, I believe that it varied
17 contract-by-contract. There were some contracts that
18 required that there be notification. There were some where
19 assignment was permitted without any action on the part of
20 the dodum (phonetic). It varied dodum (phonetic) by dodum
21 (phonetic). There is as you may be aware a separate
22 contract by and large between Liberty and each of the multi-
23 dwell units which it was served by Liberty.

24 JUDGE SIPPEL: So the contract is just with the
25 building only, not with the individual --

1 MR. SPITZER: That's right. It's either with a
2 co-op board or a condominium or with an individual owner who
3 owns a rental structure. So it would vary.

4 JUDGE SIPPEL: Have all those been completed -- I
5 mean, well, has it -- when did that transition occur? That
6 is, when were the actual payments told to be made to, where
7 would it be, Freedom down in Princeton, New Jersey as
8 opposed to being sent over to Madison Avenue?

9 MS. KIDDOO: Well, the -- as you know, the name
10 Liberty continued to be in effect --

11 JUDGE SIPPEL: Yes.

12 MS. KIDDOO: -- because it was purchased by
13 Freedom. So the bills still say Liberty. And I think
14 that -- you know that the payments -- in fact, the address
15 to which they are sent, I don't know that that's -- it's a
16 billing company I think. I don't know the details of that,
17 but it seems to me that it was virtually transparent to the
18 end-users.

19 JUDGE SIPPEL: Whose bank account do the payments
20 go into? Freedom's?

21 MS. KIDDOO: Freedom's, RCN's.

22 JUDGE SIPPEL: All right. But that's --

23 MR. PETTIT: Which we think is in New Jersey.

24 MS. KIDDOO: Which is in Princeton.

25 JUDGE SIPPEL: It's in Princeton, New Jersey.

1 MS. KIDDOO: Yes.

2 JUDGE SIPPEL: So somebody at that Madison Avenue
3 address or some address, the old Liberty address that's
4 receiving those and sending them down --

5 MS. KIDDOO: I'm not even sure they're going to
6 that address, Your Honor. I seem to recall a billing --
7 there may be a billing company that's involved that would be
8 the address to which --

9 JUDGE SIPPEL: Would that be Mr. -- this isn't Mr.
10 -- the Milford Management? Does Milford Management play
11 into that?

12 MS. KIDDOO: No.

13 JUDGE SIPPEL: All right. Now, when did that
14 start happening? Now, when did the money actually start
15 hitting the Freedom account?

16 MS. KIDDOO: As of the date of closing.

17 JUDGE SIPPEL: Well, we've got several closing
18 dates here.

19 MS. KIDDOO: March 6th, Your Honor.

20 JUDGE SIPPEL: March 6th.

21 MS. KIDDOO: The date of closing.

22 JUDGE SIPPEL: So on or shortly after March 6th,
23 Bartholdi ceased to receive money.

24 MS. KIDDOO: If I'm correct, it's the 5th.

25 JUDGE SIPPEL: The 5th, all right. March 5th.

1 Well, I thought that March 6th was the date that the deal
2 was closed, but --

3 MS. KIDDOO: That's been my recollection, but I --

4 JUDGE SIPPEL: For purposes of my question, it
5 really doesn't make any difference.

6 MS. KIDDOO: As of closing, Your Honor, the right
7 to any revenues received from those subscribers was
8 RCN/Freedom's.

9 JUDGE SIPPEL: All right. Now, after the closing
10 then, after March 5th --

11 MS. KIDDOO: Your Honor, you know that there are
12 bills that are out there that payments are constantly coming
13 in on a daily basis so that what is relevant it seems to me
14 is who is entitled to the revenues as of that closing date,
15 and that is Freedom. So, you know, where the checks went
16 needed to be sorted out because you can't change a bill
17 that's already out to a subscriber. So the revenues were
18 Freedom revenues as of that closing date.

19 JUDGE SIPPEL: But what I'm trying to get at is
20 who was working for who at the time that these payments were
21 being -- were being made and were being handled? Were these
22 Freedom employees or were these Bartholdi employees on
23 behalf of Freedom or how was that --

24 MS. KIDDOO: Employees for what purpose, Your
25 Honor?

1 JUDGE SIPPEL: For handling -- well, Mr. Spitzer
2 maybe gave the easy answer to that. That is that they have
3 a management, somebody unrelated to the two of them who is
4 doing this on a sort of contract basis. Is that right?
5 Like --

6 MR. SPITZER: At one point, I think something was
7 said to me that indicated that was the case. But I do not
8 know -- do not speak of personal knowledge on that. I'm a
9 Time Warner subscriber, unfortunately, I think I send my
10 checks to somebody other than Time Warner.

11 MS. KIDDOO: Your Honor, in any event, whoever is
12 handling the billing is not handling microwave license
13 facilities, maintenance or operation.

14 JUDGE SIPPEL: Right. I understand that. Now,
15 what else was done with respect at the time of the closing,
16 now what else was done in terms of who was working for who,
17 in terms of the working -- let's say in terms of the
18 transmission work? Were these still being done by the
19 employees of Bartholdi or were they the employees of
20 Freedom?

21 MS. KIDDOO: For a limited period of time, they
22 were still the employees of Bartholdi. I think that Freedom
23 retained those -- RCN retained those employees on the 12th
24 of March. So there was a couple of days between closing and
25 when the actual employees were transferred, basically having

1 to do with getting paperwork done and that sort of thing.

2 JUDGE SIPPEL: All right. Now, did those
3 employees -- did they have to pack up and move someplace, or
4 did they just stay in place where they were?

5 MS. KIDDOO: Some did. Some stayed in place under
6 lease arrangements, yes.

7 MR. PETTIT: Your Honor, I think you're referring
8 specifically to the two engineering contract employees, is
9 that correct?

10 JUDGE SIPPEL: Well, them, too. But I there's a -
11 - I think there was a list of something like in excess of a
12 hundred that were shown to me. And I think the bottom line
13 was is that Bartholdi ended up with having only 13 left or
14 something.

15 MS. KIDDOO: A number -- a number of the employees
16 moved to RCN's new offices, Freedom's new offices. The two
17 employees primarily responsible for maintenance of the
18 microwave facilities I think continued to reside in their
19 old offices --

20 MR. PETTIT: Might I add, Your Honor --

21 MS. KIDDOO: -- on lease spaces.

22 MR. PETTIT: -- Your Honor, Bartholdi continues to
23 maintain an office for the two engineering contract
24 employees at the Normandy which is a building where the head
25 end is and the -- or I'll call them the major transmitters

1 for the system. It's also the building where Mr. Tenetey
2 who supervises those employees on behalf of the -- on behalf
3 of Bartholdi in fact lives and works. That building is, in
4 fact, owned by the -- by the Milsteins.

5 JUDGE SIPPEL: Owned by the Milsteins, yes.

6 MR. PETTIT: Yes, that's right.

7 JUDGE SIPPEL: That's not the Madison Avenue
8 address, though, is it?

9 MR. SPITZER: It's Ninety-fifth Street, Your
10 Honor.

11 JUDGE SIPPEL: Ninety-fifth Street, okay. And
12 Milford Management is in that building?

13 MR. SPITZER: Yes, I don't know technically -- I
14 mean, that's where Mr. Tenetey lives and works. Now,
15 whether Milford Management has its corporate -- formal
16 corporate office there, I just don't know.

17 JUDGE SIPPEL: Now, with respect to the duties
18 that are being performed under the subcontract, I take it
19 since it's an as-of date, that your position would be that
20 those duties were undertaken shortly after the closing.

21 MS. KIDDOO: They were undertaken as of March
22 12th. The actual written agreement was not entered into
23 until May. However, billing has been sent to Bartholdi
24 dating back to March 12th.

25 JUDGE SIPPEL: Okay. Now, who negotiated the

1 terms of that subcontract agreement? Who were the
2 principals involved in doing that? Mr. Price?

3 MS. KIDDOO: The individuals?

4 MR. PETTIT: Negotiating the subcontractor
5 agreement? We would have to get that to you. I assume Mr.
6 Price, Your Honor.

7 JUDGE SIPPEL: And how about on the Freedom side?

8 MR. PETTIT: We'll certainly provide that to you.

9 JUDGE SIPPEL: Mr. Rosenblum?

10 MS. KIDDOO: Mr. Rosenblum, Mr. Moore, Mr.
11 Gottdenker.

12 JUDGE SIPPEL: Well, if they were doing the work
13 on the 12th and these were the -- these principals were --
14 these were all principals that are in town, right? I mean,
15 isn't that -- why did you take so long to put that together?

16 MS. KIDDOO: Your Honor, as of -- as of March
17 12th, there was an agreement as to the fact that these
18 employees would be subcontracting services to Bartholdi.
19 And there was an agreement as to the rate that would be paid
20 for their services and the terms under which they would
21 provide them. However, you can well imagine that with a
22 transition of the magnitude that was going on here in terms
23 of the new ownership structure coming in, our -- my client
24 was very much engaged in transitioning services so that
25 customers could be notified so that billing could be changed